IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 820 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FAZLURAHEMAN ABDULHAMIDJI POA HOLDER OF AMRUDDIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 820 of 2001

MR BS BRAHMBHATT for Petitioner No. 1

MR PATEL ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/01/2002

ORAL JUDGEMENT

By this petition under Article 227 of the Constitution of India, the petitioner seeks to assail the order passed by the learned Additional Sessions Judge,

Sabarkantha Dist. camping at Modassa, in Criminal Revision Application No. 49/2001 on August 18, 2001, arising out of an order passed by JMFC, Modassa in Criminal Case No. 1000/2001 in respect of disposal of muddamal after the trial and after holding enquiry.

2. The facts of the case in brief can be stated thus:

2.1 The petitioner is a Power of Attorney holder of Mukhatiyar Amruddin, who is owner of truck No. MP-14-G 3213. The said truck was involved in an offence punishable under the Prevention of Cruelty to Animals Act, besides provisions of other Act including Motor Vehicles Act. An offence came to be registered in this regard vide CR No. 23/2001 with Meghraj Police Station on 1.5.2001. According to the said FIR, the said vehicle met with an accident due to bursting of tyre. The vehicle caught fire. It was found that the truck was carrying 30 cows. The cows were tied with their legs and there was no provision for fodder or water. However, the driver and the cleaner escaped on occurrence. The cows also escaped on being released. However, ultimately the driver and cleaner came to be prosecuted. Learned JMFC by his judgement dated 18.5.2001, convicted the accused persons for the offence punishable under Section 279 of IPC as well as Prevention of Cruelty to Animals Act and Motor Vehicles Act. Learned JMFC directed that order be made in respect of muddamal after due enquiry. Thereupon, an application was moved by the petitioner for return of muddamal on 21.6.2001. Learned JMFC rejected that application by order dated 25.7.2001. The said order was carried in revision before the Sessions Court by way of Revision Application. It was registered as Criminal Revision Application No. 49/2001, which came to be disposed of by an order dated Aug. 19, 2001, which is impugned herein.

3. The petitioner seeks indulgence of this Court on the ground that both the Courts below have rejected the application for return of muddamal truck on the ground that cows were meted out with cruelty and there is nothing to indicate that the petitioner was not involved directly or indirectly in commission of the crime. There is no material to indicate as to how the accused persons came in possession of the vehicle in question and therefore, both the Courts below have committed an error in rejecting the application on irrelevant grounds.

4. Learned Advocate Mr. Brahmabhatt has taken this Court through both the judgements and orders. He

submitted that both the Courts below accepts that the petitioner is the owner of the vehicle, but they have rejected the application for return of muddamal for the above stated factors. It is not a relevant factor to be considered by the Court as to whether the petitioner was involved in commission of crime and therefore, this petition may be allowed.

5. Learned Additional Public Prosecutor Mr. Patel has opposed this petition.

6. Considering the contentions raised before this Court, it appears that the petitioner is the Power of Attorney holder of the owner of the vehicle in question. This aspect is accepted by the Courts below. It was not the prosecution case that either the petitioner or the owner of the vehicle were involved in commission of the crime. Who were involved in the crime have been punished for their criminal act. Forfeiture of this vehicle would result into punishing the petitioner without any charge, least a finding of guilt against the petitioner. The Courts below were not required to probe into or consider the question as to how the convicted accused persons came into possession of the vehicle and the inference is that because it is not explained. The petitioner was a party and therefore, the forfeiture cannot be the correct conclusion.

7. The petition deserves to be allowed as the orders of both the Courts below are based on irrelevant considerations. The petition is therefore allowed. Order of learned Additional Sessions Judge, Sabarkantha District Camping at Modassa dated 18th Aug. 2001 in Criminal Revision Application No. 49/2001 is hereby quashed and set aside. Petitioner be handed over the possession of the vehicle in question after following due procedure and verifying the documents on title. Rule made absolute. No costs. Direct service permitted.

(A.L. Dave,J.)

*/Mohandas